IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 12.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.194 of 2006

Hari Philips Michael @ Imthiaz ... Petitioner

Vs.

1.The State of Tamil Nadu, rep. by its
Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissionarate,
Pantheon Road, Egmore,
Chennai - 8. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner Hari Philips Michael @ Imthiaz, son of Varunan Anthony vide detention order No.461/2005 dated 17.09.2005 on the file of the second respondent herein made in the proceedings in Memo No.461/BDFGISV/2005 dated 17.09.2005, quash the same and consequently, direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty from Central Prison, Chennai.

For Petitioner : Mrs.Jayakumari for
Mr.M.L.Ramesh

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner by name Hari Philips Michael @ Imthiaz, who was detained as a "Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 17.09.2005, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that the description of various Sections in respect of the adverse cases in Serial No.3 of the detention order differs from that of the F.I.R. According to him, in the First Information Report, the offences said to have been committed are under Sections 457 and 511 IPC. On the other hand, in the grounds of detention, in Serial No.3, it is stated that the offences punishable are under Sections 457 and 380 IPC. According to the learned counsel, it shows non-application of mind on the part of the detaining authority. We are unable to accept the said contention. Apart from the ground case which took place on 29.08.2005, the detenu was involved in 14 adverse cases. It is not in dispute that except Serial No.3, in all other cases, the detaining authority has correctly mentioned the date of occurrence and offences committed by the detenu. In such circumstances, merely because there is a wrong description in mentioning the offences in respect of Serial No.3, the detention order cannot be faulted with. Accordingly, we reject the said contention.

4. Learned counsel appearing for the petitioner next contended that the detenu was arrested on 29.08.2005 and he was produced before the XIV Metropolitan Magistrate, Egmore, Chennai, on 30.08.2005 at 5.20 p.m. The learned Magistrate, after recording the fact that there were no complaints against police and the grounds of arrest were intimated to the detenu, remanded him till 13.09.2005. There is no dispute with regard to the date and period of remand as ordered by the learned XIV Metropolitan Magistrate, Egmore, Chennai. However, the learned counsel for the petitioner, by pointing out the remand extension order, which is available at page 179 of the paper book, contended that the date mentioned therein, viz. 13.08.2005 is factually incorrect and this was not noted by the detaining authority

https://hcservices.ecourts.gov.in/hcservices/

while passing the order of detention. According to the counsel, the remand extension order was passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, only on 13.09.2005 and not on 13.08.2005, as stated in the order. He has also contended that even though the sponsoring authority has submitted the Special Report, he has referred to the correct date of remand extension order, viz. 13.09.2005, there is no clarification or explanation in respect of the date mentioned in the remand extension order dated 13.08.2005. According to the learned counsel, in the absence of any such clarification by the sponsoring authority in respect of the date mentioned in the remand extension order dated 13.08.2005, the detaining authority is not justified in passing the impugned detention order. According to him, the said aspect shows non-application of mind on the part of the detaining authority.

5. We verified the remand extension order passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai dated 30.08.2005 and the order dated 13.09.2005 (it is mentioned as 13.08.2005). It is to be noted that in the certified copy of the order passed by the learned XIV Metropolitan Magistrate, it is stated that the remand extension order was passed on 13.08.2005, but in fact, the said order was passed only on 13.09.2005. This information was correctly stated by the sponsoring authority in his special report, which is available at page 182 of the paper book. As rightly pointed out by the Additional Public Prosecutor, the mistake is in the certified copy of the order passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai and the same cannot be corrected either by the sponsoring authority or by the detaining authority. The relevant fact that has to be considered before passing the detention order is whether the detenu was in remand, particularly on the date of passing of the detention order or whether the detenu was in custody and his remand was extended by an order of appropriate authority. It is not in dispute that on 30.08.2005, the detenu was remanded till 13.09.2005 and thereafter, his remand was extended till 27.09.2005. In such circumstances and in view of the fact that on the date of passing of the detention order, the detenu was in remand and merely because there is an error in referring to the date viz., 13.08.2005 instead of 13.09.2005, the detention order cannot be faulted with. As stated earlier, the correct information was furnished by the sponsoring authority in his special report. At the most, the reference made in the order dated 13.09.2005 which is available at page 179 of the paper book supplied to the detenu is to be treated as a typographical error. We accept the explanation offered by the learned Additional Public Prosecutor and reject the arguments of the learned counsel for the petitioner. Except the above said contentions, no other argument was urged before us.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. In the light of what is stated, we do not find any valid ground for interference. Consequently, the Habeas Corpus Petition fails and the same is dismissed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The Commissioner of Police, Greater Chennai, Egmore, Chennai-8.

3.The Superintendent, Central Prison, Chennai.
(In duplicate for communication to the petitioner)

4.The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5.The Public Prosecutor, High Court, Madras.

+ one cc to Mr.S.Jayakumar, Advocate Sr.No.24535.

SGL (CO)
RSM/19.6.2006

सत्यमेव जयते

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/